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PCT LEGAL ADMINISTRATION

In re Application of	:	
COCHRANE	:	
U.S. Application No. 10/565,227	:	
PCT No.: PCT/GB2004/003257	:	
Int. Filing Date: 26 July 2004	:	DECISION ON PETITIONS
Priority Date: 24 July 2003	:	(37 CFR 1.182)
Attorney Docket No.: BWT12106	:	(37 CFR 1.181)
For: VERTICAL AXIS WIND TURBINE	:	

This decision is issued in response to applicant's "Petition under 37 CFR 1.182" filed 03 September 2010 in the United States Patent and Trademark Office (USPTO) that seeks to correct the international application number on the national stage application papers filed 21 January 2006 so as to allow such materials to be treated as the U.S. national stage of PCT/GB2004/003257 and to withdraw the holding of abandonment in this application.

BACKGROUND

On 26 July 2004, applicant filed international application PCT/GB2004/003257, which claimed a priority date of 24 July 2003. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 24 January 2006.

On 21 January 2006, applicant filed a U.S. national stage application that included, among other materials, payment of the U.S. basic national fee. The submission was assigned U.S. application number 10/565,227.

The materials filed 21 January 2006 included a PTO-1390 transmittal letter which identified the application as a U.S. national stage of PCT/GB2004/003527, filed 26 July 2004. Applicant's English translation of the international application / specification identified the application as a U.S. national stage of PCT/GB2004/003257. Thus, applicant's 21 January 2006 filing included conflicting instruction that identified the submission as a U.S. national stage of two different international applications: PCT/GB2004/003527 and PCT/GB2004/003257.

Based on United States Patent and Trademark Office (USPTO) processing procedures, the application file was initiated in the USPTO PALM system as a U.S. national of PCT/GB2004/003527, the international application number set forth in the

PTO-1390 transmittal letter.

On 15 May 2006, applicant was mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) informing applicant of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date and payment of \$75 in additional claims fees. Applicant was afforded two months to file the proper reply and informed that this period could be extended pursuant to 37 CFR 1.136(a).

On 24 May 2006, applicant responded with payment of the additional \$75.00.

On 02 May 2007, applicant was mailed a "Notification of Defective Response" (Form PCT/DO/EO/916) instructing applicant that an oath or declaration of the inventors was still required. In addition, applicant was informed for the first time that a payment of \$65.00 was required as a surcharge for the late filing of an executed oath or declaration and that a copy of the sequence listing in computer readable form was required. Applicant was further advised that this period was not extendable but that the period set in the Form PCT/DO/EO/905 mailed 07 January 2010 could be extended pursuant to 37 CFR 1.136(a).

On 01 June 2007, applicant responded with an executed declaration of the inventor and payment of the appropriate surcharge.

On 21 August 2007, applicant was mailed a second Form PCT/DO/EO/916 advising applicant of the need to provide a copy of the sequence listing in computer readable form.

On 30 July 2010, applicant was mailed a "Notice of Abandonment Under 37 CFR 1.53(f) or (g) advising applicant that the present application was abandoned for failure to respond to the Form PCT/DO/EO/905 mailed 15 May 2006.

On 02 August 2010, applicant was mailed a second "Notice of Abandonment Under 37 CFR 1.53(f) or (g) advising applicant that the present application was abandoned for failure to respond to the Form PCT/DO/EO/905 mailed 15 May 2006.

On 03 September 2010, applicant filed a petition under 37 CFR 1.182 to correct the bibliographic data error and request for withdrawal of the holding of abandonment.

DISCUSSION

As noted above, the bibliographical data provided by applicant incorrectly identified the international application to which the submission was directed. Correction of this error is required before the materials filed 11 September 2008 can be treated as having been directed to international application PCT/GB2004/003257, as necessary to avoid abandonment of the international application with respect to the United States.

I. Petition Under 37 CFR 1.182

In the present petition filed 03 September 2010, applicant confirms that the listing of international application PCT/GB2004/003527 set forth in the Form PTO-1390 provided by applicant was the result of an error, and that the correct international application is PCT/GB2004/003257. It is noted that the correct international application number was listed on the specification filed 21 January 2006. The present petition is accompanied by payment of the required petition fee and properly identifies the application as the national stage of PCT/GB2004/003257. These materials satisfy the requirements for a grantable petition to correct the error in the bibliographical data filed 21 January 2006 and to permit such materials to be treated as having been directed to international application PCT/GB2004/003257.

II. Petition Under 37 CFR 1.181

A review of the application record finds that the Forms PTO/DO/EO/916 mailed 02 May 2007 and 21 August 2007 contained errors in requesting elements not relevant to the present application and items which were not properly listed on the Form PTO/DO/EO/905 mailed 15 May 2006. In addition, the notices of abandonment mailed 30 July 2010 and 02 August 2010 were not appropriate for a U.S. national stage filing under 35 U.S.C. 371. Applicant has to date satisfied all of the elements required for entry into the U.S. national stage. As such, it is proper to grant applicant's petition for withdrawal of the holding of abandonment in this case.

CONCLUSION

Applicant's petitions under 37 CFR 1.182 and 37 CFR 1.181 are GRANTED.

The materials filed 21 January 2006 have been assigned U.S. application number 10/565,227 and will be treated as the national stage of PCT/GB2004/003257.

The Forms PTO/DO/EO/916 mailed 02 May 2007 and 21 August 2007 and the notices of abandonment mailed 30 July 2010 and 02 August 2010 are hereby VACATED.

The application is being referred to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision.



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